

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

CHARLES W. WELCH, III
JUDGE

June 16, 2016

Mr. Richard A. Aversa
2039 Chimney Hill Road
Felton, DE 19943

Susan Schmidhauser, Esq.
Deputy Attorney General
Department of Justice
102 West Water Street
Dover, DE 19901

RE: State of Delaware v. Richard A. Aversa
Case No.: 1601003130

Decision on Defendant's Post Conviction Motions

Dear Mr. Aversa and Ms. Schmidhauser:

On May 3, 2016, the defendant, Richard A. Aversa ("Aversa"), was tried and convicted by a jury for failure to stop at a stop sign. Aversa, as a self-represented litigant, has filed the following motions for the Court's consideration: (1) a Motion for New Trial, (2) a Motion for Postconviction Relief, (3) a Motion to Quash Fines and Court Costs, and (4) a Motion to Delay Fines and Court Costs. For the reasons provided below, (1) Aversa's Motion for New Trial is denied, (2) Aversa's Motion for Postconviction Relief is denied, (3) Aversa's Motion to Quash Fines and Court Costs is denied, and (4) Aversa's Motion to Delay Fines and Court Costs is granted as provided below.

FACTS

On January 5, 2016, in the County of Kent, State of Delaware, Aversa was stopped by a law enforcement officer and charged with failure to stop at a stop sign in violation of 21 *Del. C.* § 4164(a). On May 3, 2016, Aversa, as a self-represented litigant, was tried by a jury on the charge and was convicted.

Thereafter, on May 9, 2016, Aversa, as a self-represented litigant, filed a Motion to Set Aside Judgment, which the Court has construed as a Motion for Postconviction Relief pursuant to Court of Common Pleas Criminal Rule 61. The motion was filed on the grounds of newly discovered evidence that the arresting police officer was parked on private property, without permission by the owner, at the time he observed Aversa drive past the stop sign.

In addition, Aversa filed a Motion for New Trial pursuant to Criminal Rule 33 on the following grounds: (1) newly discovered evidence that the arresting police officer was parked on private property, without permission by the owner, at the time he observed Aversa drive past the stop sign and (2) the defendant was unrepresented at trial because he could not afford an attorney and by law he could not receive a public defender.

Furthermore, Aversa has filed a Motion to Quash Fines and Court Costs and a Motion to Delay Fines and Costs. It appears as though these motions were filed on the same grounds provided for his Motion for Postconviction Relief and his Motion for New Trial.

DISCUSSION

I. Defendant's Motion for New Trial

Aversa contends that he is entitled to a new trial pursuant to Criminal Rule 33 on the grounds that (1) there is newly discovered evidence that the arresting police officer was parked on private property, without the permission of the property's owner, at the time he observed Aversa drive past the stop sign in question and (2) because he was unrepresented at trial as he could not afford an attorney and, by law, he could not receive a public defender.

"A motion for a new trial is within the sound discretion of the trial court."
Hutchins v. State, 153 A.2d 204, 206 (Del. 1959). "[I]f required in the interest of justice", a motion for new trial may be granted. Ct. Com. P. Crim. R. 33. A new trial is warranted "only if the error complained of resulted in actual prejudice or so infringed

upon defendant's fundamental right to a fair trial as to raise a resumption of prejudice." *Hughes v. State*, 490 A.2d 1034, 1043 (Del. 1985).

A. Newly discovered evidence

A motion for a new trial may be granted based on the grounds of newly discovered evidence. Ct. Com. Pl. Crim. R. 33. To obtain a new trial based on newly discovered evidence, the defendant must show: "(1) that newly discovered evidence would have probably changed the result if presented to the jury, (2) that the evidence was discovered since trial, and could not have been discovered before trial with due diligence, and (3) that the evidence is not merely cumulative or impeaching." *Swan v. State*, 28 A.3d 362, 387 (Del. 2011).

The first prong of the test for whether a new trial should be granted based on newly discovered evidence is that the newly discovered evidence must be such that if presented to the jury it would have changed the result of the trial. The Court finds that a new trial for this matter is not warranted based on the newly discovered evidence that the officer was parked on private property, without the property owner's permission, at the time the officer observed Aversa. Such evidence has no probative value as to the relevance of the officer's observation or as to Aversa's innocence. Since Aversa has failed to satisfy the first prong of the test for a new trial based on newly discovered evidence, there is no need for the Court to proceed any further with an analysis of the other two prongs of the newly discovered evidence test.

B. No legal representation at trial

Aversa also requests a new trial based on the contention that he was unrepresented at trial. The Court finds that Aversa has failed to specifically show actual prejudice or that his fundamental right to a fair trial was infringed upon. "The Sixth and Fourteenth Amendments to the United States Constitution require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense." *Scott v. Illinois*, 440 U.S. 367, 374 (1979). Therefore, where an indigent defendant is "fined for the charged crime, but is not sentenced to a term of imprisonment" he has no right to counsel.

Alabama v. Shelton, 535 U.S. 654, 657 (2002). Because Aversa was only sentenced to a fine, he had no right to counsel and, therefore, there is no showing that his fundamental right to a fair trial was infringed upon.

II. Defendant's Motion for Postconviction Relief

Aversa has also filed a Motion for Postconviction Relief pursuant to Court of Common Pleas Criminal Rule 61(b)(4). In this regard, it is his contention that he is entitled to postconviction relief based on new evidence that he discovered that the police officer that arrested him was parked on private property, without the permission of the property's owner, at the time he observed Aversa drive past the stop sign.

The time to file a motion for postconviction relief is governed by Court of Common Pleas Criminal Rule 61(b)(4) which states as follows:

Time of filing.

A motion may not be filed until the time for taking an appeal from the judgment of conviction has expired or, if an appeal is taken, until the record has been returned to this Court upon completion of the appeal or upon remand with direction to conduct a postconviction proceeding.

A motion that does not comply with the requirements of Rule 61(b)(4) shall be returned to the movant if the court so directs. Ct. Com. Pl. Crim. R. 61(c)(1); *see Walsh v. State*, 2016 WL 1165921, at *1 (Del. Mar. 16, 2016).

In the instant matter, Aversa was convicted and sentenced on May 3, 2016. Within six days, on May 9, 2016, he filed a motion for postconviction relief. Because no appeal for this matter has been taken, Aversa may not file his motion until the 15 day appeal period has expired. Super. Ct. Crim. R. 39(a). Therefore, the Court finds that Aversa's postconviction motion is premature and not ripe for consideration.

III. Motion to Quash Fines and Court Costs

Aversa's Motion to Quash his fines and court costs is improper and must be denied

by the Court. “A motion to quash is a party's request that the court nullify process or an act instituted by the other party, as in seeking to nullify a subpoena.” Black’s Law Dictionary (10th ed. 2014). The Court finds that a motion to quash for fines and court costs is improper because motions to quash are commonly used as a pretrial motion to nullify subpoenas, summonses, injunctions or indictments. In the present case, Aversa’s Motion to Quash seeks to nullify a sentence authorized by statute. *See* 11 *Del. C.* § 4207. Aversa’s objective is best served through his Motion for Postconviction Relief, which has been denied as not ripe.

IV. Motion to Delay Fines and Court Costs

Aversa’s Motion to Delay Fines and Court Costs is granted pursuant to 11 *Del. C.* Section 4104(a)(2) as the Court desires to provide Aversa time to pay all amounts due for this matter after his motions have been considered and ruled upon. Fines and court costs shall not become payable until the expiration of ninety days from the date of this Order. At the end of ninety days, Aversa may pay the total sums due in installments pursuant to a payment agreement he is hereby directed to enter with the Clerk of the Court prior to the expiration of the ninety days.

CONCLUSION

Based on the foregoing, the Court orders as follows:

- (1) Aversa’s Motion for New Trial is DENIED;
- (2) Aversa’s Motion for Postconviction Relief is DENIED;
- (3) Aversa’s Motion to Quash Fines and Court Costs is DENIED; and
- (4) Aversa’s Motion to Delay Fines and Court Costs is GRANTED.

IT IS SO ORDERED THIS 16th of June, 2016.

Sincerely,



Charles W. Welch, III